No. 73-805

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In the Supreme Court of the United States

OCTOBER TERM, 1973

RONALD COPPOLA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D. C. 20530.

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After a jury trial in the United States District Court for the Western District of Oklahoma, petitioner was found guilty of having devised a scheme to defraud, in violation of 18 U.S.C. 2314. He was fined $10,000 and sentenced to a ten-year prison term. The court of appeals affirmed (Pet. App. A).

Petitioner contends that the district court's instruc-

tion to the jury constituted plain error; that there was no venue for his prosecution in Oklahoma; that it was incorrect to admit into evidence an eyewitness identification; and that the trial court erred in refusing to grant his attorney a continuance. These contentions were thoroughly discussed and properly rejected by the court of appeals, on whose opinion we rely.[1] We note in addition that the telephone communications between Rhode Island and Oklahoma which initiated the fraudulent scheme were sufficient under 18 U.S.C. 3237(a) to allow venue in Oklahoma. See *United States* v. *Spiro*, 385 F. 2d 210, 212 (C.A. 7).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[1] Petitioner presents as a question, but does not discuss, the court's failure to give an instruction concerning the government's burden of proof on the issue of identity (Pet. 2). Petitioner did not object to this omission at trial (Tr. 410-411) or even request such an instruction (Tr. 348-349). He may not raise this issue for the first time on appeal. Rule 30, Fed. R. Crim. P.

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